HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 21, 2019
86th Legislature, Number 70
The House convenes at 10 a.m.
Part Four

The bills and joint resolutions analyzed or digested in Part Four of today's *Daily Floor Report* are listed on the following page.

Today is the last day for the House to consider Senate bills and joint resolutions on second reading, other than local and consent, on a daily or supplemental calendar.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 70

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, May 21, 2019

86th Legislature, Number 70

Part 4

SUBJECT: Limiting the liability of landowners permitting rock climbing on property

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, Smith

0 nays

2 absent — Y. Davis, White

SENATE VOTE: On final passage, March 18 — 30-0

WITNESSES: *On House companion bill, HB 687:*
For — (*Registered, but did not testify:* Brian Tickle, Access Fund; David Sinclair, Game Warden Peace Officers Association)

Against — None

BACKGROUND: Civil Practice and Remedies Code sec. 75.002 provides that an owner, lessee, or occupant of real property giving permission to another to enter the premises for recreation does not assure that the premises are safe for that purpose, owe to that person a greater degree of care than is owed to a trespasser, or assume responsibility or incur liability for any injury to any individual or property caused by any act of that person.

Sec. 75.001 defines recreation to include activities such as hunting, swimming, camping, hiking, cave exploration, or any other activity associated with enjoying nature or the outdoors.

Concerns have been raised that the definition of recreation in current statute does not include rock climbing as an activity for which a landowner has limited liability, which has discouraged many landowners from permitting rock climbing on their property.

DIGEST: SB 230 would add rock climbing to the list of recreational activities for which landowners permitting such activities on their property would have limited liability.

The bill would apply only to causes of action accruing on or after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Creating an investigation unit for certain illegal childcare facilities

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Frank, Hinojosa, Deshotel, Miller, Rose

0 nays

4 absent — Clardy, Klick, Meza, Noble

SENATE VOTE: On final passage, April 17 — 28-3 (Hall, Hughes, Schwertner)

WITNESSES: For — Kimberly Kofron, Texas Association for the Education of Young Children; (*Registered, but did not testify*: Jason Sabo, Children at Risk; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; David Feigen, Texans Care For Children; Sarah Crockett, Texas CASA; Jennifer Lucy, TexProtects; and six individuals)

Against — None

On — (*Registered, but did not testify*: Jean Shaw, Health and Human Services Commission)

DIGEST: SB 706 would require the executive commissioner of the Health and Human Services Commission to maintain a unit within the childcare licensing division consisting of investigators whose primary responsibility was to identify and childcare facilities operating without a license, certification, registration, or listing and initiate appropriate enforcement actions against those facilities.

The bill would take effect September 1, 2019. The executive commissioner would have to establish the investigation unit as soon as possible after the effective date.

NOTES: According to the Legislative Budget Board, the bill would have an estimated negative impact of $4.5 million to general revenue related funds through fiscal 2020-21.

SUBJECT: Requiring DIR to develop a data portal for state agencies' use

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Raymond

SENATE VOTE: On final passage, April 26 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Megan Schrader, Amazon Web Services

Against — None

On — (*Registered, but did not testify*: Ed Kelly, Department of Information Resources)

BACKGROUND: Interested parties have suggested that statewide digital information services could be improved if recommendations from the Department of Information Resources were implemented.

DIGEST: SB 819 would require the Department of Information Resources (DIR) to develop and manage a data portal for use by state agencies and to create a digital transformation guide for agency use.

DIR would be required to establish the Texas Open Data Portal, a central repository of publicly accessible electronic data that would be the official open data internet website for the state. The department would have to ensure that state agencies and political subdivisions of the state were granted shared access to the repository that would allow the agencies and subdivisions to easily post publicly accessible information to the repository. Each state agency would be required to prioritize using the data portal and actively collaborate with the department on publicly accessible data issues.

The bill would rename the statewide data coordinator as the chief data officer and repeal the position's expiration date. The chief data officer would be charged with assisting DIR in developing and managing the Texas Open Data Portal. The officer would have to develop and implement best practices among state agencies to encourage agencies to collect and post information related to their functions or other data they maintained to the data portal.

SB 819 also would require DIR to create a digital transformation guide to assist state agencies with modernizing their electronic data operations and services and converting agency information into electronic data. DIR would be authorized to provide:

- mobile application development assistance;
- paper document and form inventory assistance;
- paperless or paper-on-request operational process planning and development; and
- electronic notification and digital communication between agencies and the public.

Under the bill, each state agency would be required to consider cloud service options and compatibility with cloud computing services in the development of new information technology software applications.

Each state agency also would be required to designate an agency employee to serve as the agency's information resources manager. An information resources manager could serve two or more state agencies if the DIR approved the joint designation.

The bill would take effect September 1, 2019.

SUBJECT: Revising procedures for sending defendants for competency restoration

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Collier, K. Bell, J. González, Murr, Pacheco

0 nays

4 absent — Zedler, Hunter, P. King, Moody

SENATE VOTE: On final passage, April 29 — 31-0

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure arts. 46B and 46C establish the procedures followed when a criminal defendant charged with certain violent crimes is incompetent to stand trial or not guilty by reason of insanity.

Art. 46B.073(c) requires courts to commit defendants charged with certain violent offenses or an offense involving a deadly weapon who need their competency restored to the maximum security unit of any facility designated by the Department of State Health Services, to a federal agency operating a mental hospital, or to a Department of Veterans Affairs hospital. Under art. 46B.105, unless a defendant is determined to be manifestly dangerous by a review board, the defendant must be transferred from a maximum security unit to another facility within 60 days of arrival. Art. 46C.260 establishes similar procedures for certain defendants found not guilty by reason of insanity.

Some have noted that current law uses the offense, rather than a clinical determination, to determine where a defendant will be sent for competency restoration, resulting in many defendants who do not meet the standard for dangerousness being sent to the North Texas State Hospital in Vernon. They note that this exacerbates waiting lists for those in county jails waiting to transfer to facilities for competency restoration.

DIGEST: CSSB 562 would revise procedures used when defendants charged with

certain violent crimes are incompetent to stand trial or found not guilty by reason of insanity. Instead of having to commit these defendants to the maximum security unit of certain facilities, courts would be required to commit them to a facility designated by the Health and Human Services Commission (HHSC). The bill would allow HHSC to designate only a facility operated by the commission or under a contract with the commission.

The bill would allow defendants committed by HHSC to a maximum security unit for competency restoration to be assessed, at any time before the defendant was restored to competency, by a review board to determine if the defendant was manifestly dangerous. If the board determined the defendant was not manifestly dangerous, HHSC would be required to transfer the defendant to a non-maximum security facility.

The bill would revise the procedure followed when a defendant having competency restored was being released from a facility or treatment if the court or prosecutor had notified the facility or treatment provider that criminal charges were still pending against the defendant. Instead of courts being authorized to hold a hearing to determine if the release was appropriate, courts would be required to hold a hearing. Courts would be given new authorization to hold such hearings in the absence of notice from the facility or treatment provider about intent to release the defendant.

For those committed to facilities after being found not guilty by reason of insanity, HHSC would determine to which facility the person would be committed. Those who were not determined to be manifestly dangerous would be transferred to a facility designated by HHSC.

The bill would revise certain definitions related to this process, including adding a person with an intellectual disability to the definition of forensic patient. The bill would make other changes, including requiring counties to include information on mental health records, mental health screening reports, or similar information when transferring defendants to the Texas Department of Criminal Justice.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2019. It would apply to proceedings that began on or after the bill's effective date.

SUBJECT: Developing guidelines for the care of students at risk for anaphylaxis

COMMITTEE: Public Education — favorable, without amendment

VOTE: 12 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Talarico, VanDeaver

0 nays

1 absent — Sanford

SENATE VOTE: On final passage, May 10 — 31-0

WITNESSES: *On House companion bill, HB 2555:*
For — Beth Martinez; (*Registered, but did not testify*: Chris Masey, Coalition of Texans with Disabilities; Mark Vane, HB Strategies; Kyle Ward, Texas PTA; Calvin Tillman; Al Zito)

Against — Louise Bethea, Texas Allergy, Asthma, and Immunology Society

On — (*Registered, but did not testify*: Nimisha Bhakta, Department of State Health Services; Eric Marin and Monica Martinez, Texas Education Agency)

BACKGROUND: Interested parties have called on the state to update the health guidelines used by public schools to ensure the safety of students with food allergies who are at risk for anaphylaxis, an acute, life-threatening allergic reaction that can develop rapidly.

DIGEST: CSHB 2555 would require the commissioner of the Department of State Health Services (DSHS) to create an ad hoc committee to consult with the commissioner on updating current guidelines for the care of students with food allergies who were at risk of anaphylaxis. The guidelines and any recommendation to update the guidelines regarding medical treatment or therapy would have to be scientifically valid. School districts and open-enrollment charter schools would be required to adopt and administer

policies for the care of students based on the guidelines.

Committee membership. Members of the ad hoc committee required under the bill would be appointed by the DSHS commissioner to assist in updating "Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis" to incorporate and specifically reference any new food-allergy management best practices and treatments.

The commissioner would be required to appoint certain individuals as members of the committee, including representatives of the medical profession, patients, members of the education community, and parents. Committee members would serve for a period determined by the commissioner.

Committee requirements. Any recommendations on updating the current guidelines regarding medical treatment or therapies would have to be submitted by the physicians directly to the commissioner, provided that the recommendations could only be submitted if approved by a majority of the physicians serving on the committee.

At least once every three years, the commissioner would be required to order a meeting of the committee to discuss updating the guidelines. The commissioner also could order a meeting at any time to discuss the protection of students at risk for anaphylaxis and to update the guidelines.

The bill would exempt DSHS from certain provisions that would require the agency to state the purpose and tasks of the committee and to describe the manner in which the committee reported to the agency.

The commissioner would be required to appoint the committee by October 1, 2019, and to update the guidelines by March 1, 2020.

Guidelines. The bill would require the policy that currently must be adopted and administered by the board of trustees of each school district and the governing body of each open-enrollment charter school for the care of students with a diagnosed food allergy at risk for anaphylaxis to be based on "Guidelines for the Care of Students with Food Allergies At-Risk for Anaphylaxis."

The Texas Education Agency (TEA) would be required to post the guidelines on the agency's website along with any other information relating to students with special health needs. The information posted would have to include a summary of the guidelines. TEA would be required to annually review and revise the guidelines as necessary to reflect the most current version.

Each school year, the board of trustees of each school district and the governing body of each open-enrollment charter school would have to post a summary of the guidelines on the district's or school's website, including instructions on how to obtain access to the complete guidelines. The district's or school's website would have to be accessible by each enrolled student and a parent or guardian of each student. Any form used by a district or school requesting information from a parent or guardian enrolling a child with a food allergy would have to include information on how to access the guidelines.

Each year, a school district or an open-enrollment charter school would be required to review and, as necessary, revise its policy for the care of students at risk for anaphylaxis to ensure it was consistent with the most current version of the guidelines established by DSHS in consultation with the ad hoc committee.

Limitations. The guidelines described in the bill could not require a school district or open-enrollment charter school to purchase federally approved treatments or make any other expenditures that would result in a negative fiscal impact on the district or school. The guidelines also could not require the personnel of a district or school to administer federally approved treatments to a student unless the medication was prescribed for that student by the student's physician.

These limitations would not waive any liability or immunity of a school district, open-enrollment charter school, or district or school officers or employees, nor would it create any liability for or a cause of action against these entities. The bill would not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provided the basis for a cause of action.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Requiring HHSC to update rules on opioid antagonist prescriptions

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Frank, Hinojosa, Deshotel, Klick, Meza, Miller, Noble

0 nays

2 absent — Clardy, Rose

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: For — Lori Holleran; (*Registered, but did not testify*: Anne Dunkelberg, Center for Public Policy Priorities; Chris Masey, Coalition of Texans with Disabilities; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Greg Hansch, National Alliance on Mental Illness Texas; Will Francis, National Association of Social Workers-Texas Chapter; Cameron Duncan, Texas Hospital Association; Pamela McPeters, TexProtects, Texas Chapter of Prevent Child Abuse America; Alexis Tatum, Travis County Commissioners Court; Rebecca Harkleroad; Maria Person)

Against — None

On — (*Registered, but did not testify*: Sarah Melecki, Texas Health and Human Services Commission)

BACKGROUND: 21 U.S.C. sec. 823(g)(2)(G)(iii) defines "qualified practitioner" to mean a licensed physician with certification in addiction psychiatry or addiction medicine with relevant training and experience. The definition also includes a nurse practitioner or physician assistant who had completed certain training and who was supervised by a qualifying physician.

Concerned parties note that a large number of Texans who have a substance use disorder do not have access to providers who are able to prescribe them the common opioid antagonist buprenorphine.

DIGEST: SB 1564 would require the Health and Human Services Commission to

amend the commission's Medicaid Substance Use Disorder Services Medical Policy and any other provider or claims payment policy or manual necessary to authorize Medicaid reimbursement for the prescribing of buprenorphine for the treatment of an opioid use disorder by an advanced practice registered nurse. The nurse would have to be recognized by the Texas Board of Nursing as a clinical nurse specialist, nurse anesthetist, or nurse midwife, and be a qualifying practitioner who had obtained a federal waiver from registration requirements for dispensing narcotic drugs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Modifying certain child support enforcement requirements

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 7 ayes — Dutton, Murr, Bowers, Calanni, Dean, Lopez, Talarico

0 nays

2 absent — Cyrier, Shine

SENATE VOTE: On final passage, April 10 — 30-0

WITNESSES: *On House companion bill, HB 2264:*
For — Charla Bradshaw, Texas Family Law Foundation; *(Registered, but did not testify:* Aimee Bertrand, Harris County Domestic Relations Office; Amy Bresnen, Steve Bresnen, and Roxie Cluck, Texas Family Law Foundation)

Against — (*Registered, but did not testify:* Jeffrey Morgan)

On — Taran Champagne, Americans for Parental Equality; Joshua Jaros, Montgomery County United for Shared Parenting; (*Registered, but did not testify:* Joel Rogers, Office of the Attorney General)

BACKGROUND: Family Code ch. 8 governs maintenance payments, which are awards in lawsuits for the dissolution of marriages that include periodic payments from the future income of one spouse for the support of the other spouse.

Ch. 234 governs the state disbursement unit, which receives, maintains, and furnishes records of child support payments, forwards child support payments, and performs certain other tasks.

Sec. 156.401 governs the grounds for modification of child support orders, and ch. 157 governs the enforcement of these orders.

Ch. 231 governs the state's Title IV-D program, which enforces the payment of child support. The Office of the Attorney General is the state's

Title IV-D agency.

Sec. 159.605 requires the registering tribunal of Texas to notify non-registering parties when a foreign support order or support order or income-withholding order issued in another state is registered. The notice must inform non-registering parties that hearings to contest the validity of enforcement of the orders must be requested within 20 days of the notice.

Some have called for clarifications and updates to various portions of current law pertaining to lawsuits involving parent-child relationships and child support.

DIGEST:

SB 1676 would modify various laws pertaining to parent-child relationship lawsuits and the enforcement of child support.

Maintenance. SB 1676 would require courts to order obligors who were ordered to pay maintenance and child support to pay maintenance to the state disbursement unit.

Modifying child support orders. The bill would establish that incarceration of child support obligors in local, state, or federal jails or prisons for longer than 180 days constituted material and substantial changes of circumstances for the purposes of modifying child support orders.

Child, medical, and dental support. SB 1676 would specify that courts retained jurisdiction to confirm the total amounts of child, medical, and dental support arrearages and render cumulative money judgments for past-due support if motions for enforcement were filed by the 10th anniversary of the date a child became an adult or on which child support obligations terminated.

Courts would be required to render separate cumulative money judgments for child, medical, and dental support.

Cumulative money judgments for medical or dental support owed would include:

- unpaid medical or dental support not previously confirmed;
- the balance owed on previously confirmed medical or dental support arrearages or lump sum or retroactive medical or dental support judgments;
- the interest on medical or dental support arrearages; and
- statements that they were cumulative judgments for the amount of medical or dental support owed.

Qualified domestic relations orders. SB 1676 would establish that courts that rendered orders for the payment of child support, or courts that obtained jurisdiction to enforce child support orders under the Uniform Interstate Family Support Act, had continuing jurisdiction to render enforceable qualified domestic relations orders or similar orders permitting the payment of pensions, retirement plans, or other employee benefits to alternate payees or other lawful payees to satisfy child support orders. These courts would retain jurisdiction to render qualified domestic relations orders or similar orders until all support, including arrearages and interest, was paid.

Child support orders would include temporary or final orders for child support, medical support, or dental support and arrears and interest.

Unless prohibited by federal law, qualified domestic relations orders or similar orders would apply to all pensions, retirement plans, and other employee benefits regardless of whether they were:

- private, state, or federal;
- subject to other qualified domestic relations orders or similar orders;
- properties that were the subject of pending proceedings for dissolutions of marriages;
- properties disposed of in previous decrees for dissolution of marriages; or
- the subject of premarital and marital property agreements.

Procedure. Parties to child support orders or Title IV-D agencies in Title IV-D cases could petition courts for qualified domestic relations orders or

similar orders in original suits or in actions for child support enforcement.

Parties whose rights could be affected by the petition would be entitled to receive notice required under current law.

Temporary orders. While suits for qualified domestic relations orders or similar orders were pending or during appeals of enforcement orders, and on the motion of parties or on courts' own motions, courts could grant temporary restraining orders and temporary injunctions for the preservation of pensions, retirement plans, or other employee benefits and the protection of the parties, as the court considered necessary.

Temporary orders would not be subject to interlocutory appeal.

Continuing jurisdiction. If plan administrators or other individuals acting in equivalent capacities determined that a domestic relations order did not satisfy certain necessary requirements, courts would retain continuing jurisdiction over parties to the extent necessary to render a qualified domestic relations order.

Additionally, courts that rendered qualified domestic relations orders or similar orders would retain continuing jurisdiction to:

- amend the orders to correct them, clarify their terms, or add language to them to provide for the collection of child support;
- convert the amount or frequency of payments under the orders to formulas that were in compliance with the terms of pensions, retirement plans, or employee benefit plants; or
- vacate or terminate the orders.

Amended domestic relations orders or similar orders would have to be submitted to plan administrators or other individuals acting in equivalent capacities to determine whether they satisfied certain requirements.

Other provisions. Courts would be required to liberally construe the bill's language about these qualified domestic relations orders to effect payment of pensions, retirement plans, or other employee benefits for the satisfaction of child support obligations.

In proceedings involving qualified domestic relations orders, courts could order obligors to pay reasonable attorney's fees incurred by parties to obtain the orders, all court costs, and all fees charged by plan administrators. Fees and costs could be enforced by any means available for the enforcement of child support, including contempt.

Other provisions. SB 1676 would require registering tribunals in Texas, upon the registration of foreign support orders or orders issued in other states, to notify non-registering parties that hearings to contest the validity or enforcement of these orders would have to be requested within 30 days of the notice, rather than 20 days.

The bill also would require courts that ordered parties to pay child support under temporary or final orders to order all child support payments to be paid to the state disbursement unit, including any child support that the court ordered employers to withhold from the income of obligors.

SB 1676 would specify that the state and political subdivisions would have to comply with certain child support lien provisions before paying judgments relating to workers' compensation insurance coverage for employees. Any delays in complying with judgments due to compliance with these requirements would not subject the state or political subdivisions to awards of penalties or attorney's fees.

The bill would require individuals, when making disclaimers of interest in properties, to include sworn statements with the disclaimers regarding whether they were child support obligors.

The bill would apply only to maintenance orders rendered, suits for modification of child support orders filed, cumulative money judgements rendered, support orders or income-withholding orders issued by courts of other sates and registered in this state, judgments in workers' compensation cases awarded, and property disclaimers made on or after the bill's effective date.

Obligors subject to maintenance orders rendered before the effective date could choose to remit maintenance payments to the state disbursement

unit, and the state disbursement unit would have to accept these payments

The bill would take effect September 1, 2019.

SUBJECT: Creating a council to improve access to certain educational opportunities

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — C. Turner, Stucky, Frullo, Howard, E. Johnson, Pacheco, Schaefer, Smithee, Wilson

0 nays

2 absent — Button, Walle

SENATE VOTE: On final passage, April 10 — 30-0

WITNESSES: *On House companion bill, HB 3932:*
For — Chris Masey, Coalition for Texans with Disabilities; (*Registered, but did not testify*: Jacquie Benestante, Autism Society of Texas; Steven Aleman, Disability Rights Texas; Lisa Flores, Easterseals Texas; Will Francis, National Association of Social Workers-Texas Chapter; Lee Johnson, Texas Council of Community Centers; Linda Litzinger, Texas Parent to Parent; Kevin Stewart, Texas Psychological Association; Jimmie Chatham)

Against — None

On — Ashley Ford, Texas Council for Developmental Disabilities; (*Registered, but did not testify*: Jerel Booker, Texas Higher Education Coordinating Board)

BACKGROUND: Some have called for Texas to improve access to postsecondary education for people with intellectual and developmental disabilities.

DIGEST: SB 1017 would require the Texas Higher Education Coordinating Board (THECB) to establish an advisory council to advise the board on improving access to postsecondary educational opportunities for persons with intellectual and developmental disabilities.

The bill would require the board, with the assistance of the advisory

council, to periodically review the policies and practices that increased access to higher education opportunities for persons with intellectual and developmental disabilities and to distribute educational outreach materials developed by the council to increase awareness of such opportunities.

Advisory council. The executive director of the Texas Workforce Commission, the commissioner of the Texas Education Agency, and the governor would each appoint one member to the advisory council, as specified in the bill. THECB also would appoint council members, including:

- a representative of a University Centers for Excellence in Developmental Disabilities program in Texas;
- a representative of a disability advocacy group;
- a parent or guardian of a person with an intellectual or developmental disability;
- a parent or guardian of a person with an intellectual or developmental disability that was enrolled in an institution of higher education;
- a person with an intellectual or developmental disability enrolled in an institution of higher education;
- a high school counselor;
- a specialist in the transition to employment from a regional education service center, school district, or other state agency; and
- additional representatives with relevant experience, as needed.

Council members would serve two-year terms and would not be entitled to compensation. Members could receive reimbursement for expenses related to conducting council business.

Members would elect a presiding officer and meet at least quarterly at the call of the presiding officer. Council members would have to be appointed by January 1, 2020.

Duties. The advisory council would be required to study the accessibility of higher education for individuals with intellectual or developmental disabilities, provide advice on resolving barriers to access for these

individuals, and develop recommendations to address barriers to accessing higher education for individuals with intellectual or developmental disabilities who were or who had been in the foster care system.

The advisory council annually would have to submit to THECB a report that included information regarding:

- the advisory council's activities;
- any relevant rule changes necessary to decrease barriers to accessing higher education for persons with intellectual and developmental disabilities; and
- recommendations for potential outreach and education materials to increase public awareness of the availability of higher education opportunities and resources for persons with intellectual or developmental disabilities, including information on available grants, loan programs, and other resources.

By December 1 of each even-numbered year, the council would have to provide a report to THECB and to the governor, the lieutenant governor, the House speaker, the members of the Legislature, and, as necessary, other state agencies or relevant stakeholders. The report would have to include historic and current higher education data regarding individuals with intellectual or developmental disabilities, including graduation rates, the geographic distribution of institutions of higher education providing appropriate opportunities, a description of available programs, and any other relevant data.

The report also would have to include recommendations for changes to support success and achievement for persons with intellectual and developmental disabilities in accessing higher education, including recommendations for addressing gaps in data and identifying problems with and barriers to accessing higher education.

The advisory council would have to complete the initial reports required by the bill by December 1, 2020.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2019.

SUBJECT: Allowing physicians to delegate patients' drug therapy to pharmacists

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 26 — 30-0, on Local and Uncontested Calendar

WITNESSES: *On House companion, HB 4297:*
For — Debbie Garza, Texas Pharmacy Association; Keri Krupp; (*Registered, but did not testify*: Audra Conwell, Alliance of Independent Pharmacists; Robert Howden, Baylor Scott and White Health; Tom Banning, Texas Academy of Family Physicians; Mimi Garcia, Texas Association of Community Health Centers; Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists; Duane Galligher, Texas Independent Pharmacies Association; Dan Finch, Texas Medical Association; Stephanie Chiarello, Texas Pharmacy Association; Mark Comfort, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; and 8 individuals)

Against — None

BACKGROUND: Occupations Code sec. 157.101(b-1) authorizes a physician to delegate to qualified pharmacists the implementation and modification of a patient's drug therapy under a protocol, including the authority to sign a prescription drug order for dangerous drugs under certain circumstances.

Sec. 554.057 requires the Texas State Board of Pharmacy, with the Texas Medical Board's advice, to adopt rules that allow a pharmacist to implement or modify a patient's drug therapy pursuant to a physician's delegation under sec. 157.101(b-1).

Observers have noted the benefits of a team-based care model between a pharmacist and physician. Recent legislative changes have caused some confusion regarding when the signing of a prescription drug order may be delegated to a pharmacist. Some suggest the need to address this concern by specifying the circumstances under which a qualified pharmacist acting under adequate physician supervision could implement or modify a patient's drug therapy.

DIGEST:

SB 1056 would allow a physician to delegate to qualified pharmacists the implementation and modification of a patient's drug therapy if:

- the delegation followed a diagnosis, initial patient assessment, and drug therapy order by the physician; and
- the pharmacist maintained a copy of the protocol for inspection until at least the seventh anniversary of the protocol's expiration date.

By December 1, 2019, the Texas State Board of Pharmacy would have to adopt rules to implement Occupations Code sec. 554.057.

The bill would take effect September 1, 2019.

SUBJECT: Requiring review of occupational licensing rules by governor's office

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Phelan, Guerra, Harless, Holland, Hunter, P. King, Parker, Springer

4 nays — Hernandez, Deshotel, Rodriguez, Smithee

1 absent — Raymond

SENATE VOTE: On final passage, April 23 — 24-7 (Bettencourt, Campbell, Johnson, Menéndez, Schwertner, Watson)

WITNESSES: For — (*Registered, but did not testify*: Arif Panju, Institute for Justice; Annie Spilman, NFIB)

Against — (*Registered, but did not testify*: Robert Yezak, International Brotherhood of Electrical Workers; Ronnie Smitherman, Texas Building Trades Council)

On — (*Registered, but did not testify*: Kim Van Winkle, Office of the Attorney General)

DIGEST: SB 1995 would require the governor to establish a division to review certain rules proposed by state agencies that issued licenses.

Rules review process. The bill would apply only to a state agency with a governing board that was controlled by persons who provided services that were regulated by the agency.

A state agency that issued a license would be required to submit to the division for review any proposed rule or rule being considered for re-adoption that would affect market competition of licensed businesses, occupations, or professions. A rule would be considered to affect market competition if it would create a barrier to market participation or result in higher prices or reduced competition for a product or service provided by

a license holder.

The agency would have to include with the submission a statement of the purpose for the proposed rule; copies of all administrative records regarding the proposed rule, including any information or comments the agency received from the public; and any other information required by the division.

The division would be required to complete a thorough, independent review to determine if the effect of the proposed rule on market competition was consistent with state policy as established by the agency's governing statute and whether the proposed rule promoted a clearly articulated and affirmatively expressed policy as established by the Legislature to displace competition with government action. The division would be authorized to initiate a review of a proposed rule that was not submitted for review if the division had reason to believe the rule could have an anticompetitive market effect.

When conducting a review of a proposed rule or deciding whether to initiate a review, the division could only consider evidence or communications that were submitted to the division in writing from an identified person or entity and made available to the public, submitted in a public hearing, or generally known to the public.

In conducting the review, the division could request information from the agency, require the agency to conduct an analysis of the possible implications of the rule, solicit public comments, or hold public hearings.

The division would have to complete the review by the 90th day after receiving the agency's submission. After the review, the division would either approve the proposed rule or reject it and return the rule to the agency with instructions for revising the rule to be consistent with applicable state policy. An agency could not adopt or implement a rule subject to review under the bill unless the division had approved it.

The division would have to provide to the agency and make publicly available an explanation of its approval or rejection of the rule, including a discussion of the division's determination regarding the consistency of the

rule with applicable state policy.

Division administration. The governor would appoint a director for the division who had experience in antitrust law and held a Texas law license. The director would serve a two-year term and would be appointed with the advice and consent of the Senate.

The bill would prohibit the appointment of a division director, or the employment of a professional, administrative, or executive division employee, who had a conflict of interest as prescribed by the bill, including being an officer, employee, or paid consultant of a Texas trade association or having a spouse who had such a role. The governor also could not appoint as director or general counsel to the division a person who was required to register as a lobbyist.

The Office of the Governor would be required to implement a provision of the bill only if the Legislature appropriated money specifically for that purpose. Otherwise, the office would be permitted, but not required, to implement the bill with other available appropriations.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

SB 1995 would establish a mechanism for oversight of potentially anticompetitive actions by state regulatory boards, which would mitigate concerns over liability that the state could face under federal antitrust law.

The U.S. Supreme Court in its 2015 *North Carolina State Board of Dental Examiners v. Federal Trade Commission* decision created an exception to the idea that states are immune from antitrust lawsuits when state boards undertake anticompetitive actions. The court articulated that for a state to enjoy immunity from antitrust suits, the state must articulate a clear state policy to justify an anticompetitive action and provide active supervision of the agency undertaking the action.

SB 1995 would enable the state to undertake this active control of potentially anticompetitive actions by creating a division in the Office of the Governor to review rules proposed by state licensing boards to ensure there was a legitimate state purpose for each rule. Without this active

control, the state could be subject to liability for an anticompetitive action.

The bill would not concentrate too much power in the hands of the governor because dissatisfied parties would still have recourse to judicial appeal if a proposed rule was rejected, and the Legislature would retain the authority to correct, adjust, or modify the policies governing boards and commissions as needed.

OPPONENTS SAY:

SB 1995 would concentrate too much power in the Office of the Governor, giving it final say over a substantial amount of agency rulemaking. This would represent a significant departure from how agencies typically make rules.

Although the bill aims to address a legitimate concern, this same concern could be addressed instead by altering the composition of the boards and commission so that fewer members were industry practitioners.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact to general revenue related funds of $1 million through the biennium ending August 31, 2021. The bill would make no appropriation but could provide the legal basis for one.

SUBJECT: Requiring HHSC to revise certain Medicaid managed care policies

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Frank, Hinojosa, Deshotel, Klick, Meza, Miller, Noble, Rose

0 nays

1 absent — Clardy

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: No public hearing

BACKGROUND: Government Code ch. 531, subch. B governs the powers and duties of the Health and Human Services Commission (HHSC). Ch. 533 governs Medicaid managed care programs and requires contracts between HHSC and Medicaid managed care organizations to contain certain provisions.

Some have noted that the Medicaid process can result in the inefficient resolution of denied claims and payments, creating complexities for health providers participating in Medicaid managed care programs and hindering access to care for certain patients, including medically fragile children. It has been suggested that standardizing the complaint process and prior authorization procedures would help reduce the administrative burden for providers and patients and improve access to quality care.

DIGEST: CSSB 1105 would amend prior authorization procedures in Medicaid managed care, require the Health and Human Services Commission (HHSC) to standardize certain data and to consider other delivery models for STAR Kids, and require Medicaid managed care organizations' (MCOs') contracts to contain certain provisions.

Notice. The bill would require HHSC to ensure that a notice sent by HHSC or an MCO to a Medicaid recipient or provider regarding the denial of coverage or prior authorization for a service included a clear explanation for the denial.

If the commission or an MCO received a coverage or prior authorization request that contained insufficient or inadequate documentation to approve the request, HHSC or the MCO would have to issue a notice to the requesting provider and the Medicaid recipient on whose behalf the request was submitted. The notice would have to include:

- a clear and specific list and description of the documentation necessary to make a final determination on the request;
- the applicable timeline, based on the requested service, for the provider to submit the documentation and a description of the reconsideration process; and
- information regarding how a provider could contact an MCO.

Prior authorization. The HHSC executive commissioner by rule would have to require each Medicaid MCO or other entity responsible for authorizing health care services under Medicaid to maintain on its website the applicable timelines for prior authorization requirements and an accurate, up-to-date catalogue of coverage criteria and prior authorization requirements.

Such organizations also would be required to adopt and maintain a process for a provider or Medicaid recipient to contact the MCO or entity to clarify prior authorization requirements or to assist the provider or recipient in submitting a prior authorization request. The executive commissioner of HHSC would have to ensure that these processes were not arduous or overly burdensome to a provider or recipient.

Contract provisions. The bill would require a Medicaid MCO that contracted with HHSC to establish processes for reviewing and reconsidering certain adverse determinations on prior authorization requests. These required processes would apply only to a contract entered into or renewed on or after the bill's effective date. The bill would specify that an adverse determination on a prior authorization request would be considered a denial of services in an evaluation of the MCO only if the determination was not amended to approve the request.

HHSC would have to seek to amend contracts with Medicaid MCOs that

had been entered into before the bill's effective date to include the bill's required contract provisions.

Annual review. A Medicaid MCO would have to implement a process to conduct an annual review of the MCO's prior authorization requirements, other than those for prescription drugs under the vendor drug program.

Under the bill, a Medicaid MCO could not impose a prior authorization requirement, other than a requirement for the vendor drug program, unless the MCO had reviewed the requirement during the most recent annual review required under the bill.

Grievances. The bill would require HHSC to standardize Medicaid grievance data reporting and tracking and establish a procedure for expedited resolution of a Medicaid grievance. HHSC would have to aggregate Medicaid recipient and provider grievance data and make de-identified aggregated data available to the Legislature and the public.

Medicaid fee schedule. The bill would require HHSC to adopt policies to ensure that changes to a Medicaid fee schedule were implemented in a way that minimized administrative complexity, financial uncertainty, and retroactive adjustments for providers. HHSC would have to develop a process for individuals and entities that delivered services under the Medicaid managed care program to provide oral or written input on the proposed policies.

In adopting the policies, HHSC also would have to ensure that MCOs and the state's Medicaid claims administrator under the Medicaid fee-for-service delivery model were provided a minimum of 45 days before the final fee schedule's effective date to make any necessary administrative or systems adjustments to implement the change. These provisions would not apply to changes to the fees, charges, or payment rates made to a nursing facility or to capitation rates paid to a Medicaid MCO.

The bill would apply only to a change to a fee, charge, or rate that took effect on or after January 1, 2021.

STAR Kids. The bill would require the executive commissioner of

HHSC, in collaboration with the STAR Kids Managed Care Advisory Committee, to determine the feasibility of providing Medicaid benefits to children enrolled in the STAR Kids managed care program under an accountable care organization model or an alternative model developed by or in collaboration with the Centers for Medicare and Medicaid Services Innovation Center.

By December 1, 2022, HHSC would have to submit a written report to the Legislature of the executive commissioner's determination. These provisions would expire September 1, 2023.

Provider identification number. The bill would require HHSC to transition from using a state-issued provider identifier number to using only a national provider identifier number.

By September 1, 2020, HHSC would have to implement a Medicaid provider management and enrollment system and only use a national provider identifier number to enroll providers in Medicaid. The commission also would have to implement a modernized claims processing system using only a national provider identifier number to process claims for and authorize Medicaid services by September 1, 2023.

Other provisions. The bill would require a managed care plan offered by an MCO to be accredited by a nationally recognized accreditation organization. By September 1, 2022, a managed care plan offered by an MCO with which HHSC entered into or renewed a contract on or after the bill's effective date would have to comply with the accreditation requirements.

As soon as practicable after the bill's effective date, the HHSC executive commissioner would adopt rules to implement the bill's provisions. HHSC would have to implement the bill's provisions only if the Legislature appropriated money for that purpose.

The bill would take effect September 1, 2019.

NOTES: According to the Legislative Budget Board, the bill would have an estimated negative impact of $5 million to general revenue related funds

through fiscal 2020-21.

SUBJECT: Allowing DSHS to collect voluntary information on maternal deaths

COMMITTEE: Public Health — favorable, with amendment

VOTE: 9 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Lucio, Ortega, Price, Sheffield

0 nays

2 absent — Coleman, Zedler

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Tax Code ch. 323 establishes the County Sales and Use Tax Act, which governs the administration of sales and use taxes in counties. Tax Code ch. 26 excludes certain cities', counties', and hospital districts' additional sales and use taxes from certain property tax assessment provisions.

Interested parties note that the U.S. Congress passed into law the Preventing Maternal Deaths Act in 2018, making certain federal grants available to states for the purpose of reviewing pregnancy-related and pregnancy-associated deaths in maternal mortality review committees. They also note that certain changes are required to align Texas law with the requirements in the new federal legislation.

DIGEST: SB 2150, as amended, would add a statutory definition of pregnancy-associated death and authorize the Department of State Health Services (DSHS) to allow voluntary and confidential reporting of certain pregnancy-related and pregnancy-associated deaths by certain health care professionals and family members. The bill also would change the name of the Maternal Mortality and Morbidity Task Force to the Maternal Mortality and Morbidity Review Committee and allow DSHS to use federal funding or grant money to reimburse members of the review committee for travel expenses.

Reporting. DSHS could allow voluntary and confidential reporting of pregnancy-associated and pregnancy-related deaths by health care professionals, health care facilities, and persons who completed the medical certification for a death certificate for deaths reviewed or analyzed by the review committee.

DSHS would be required to allow voluntary and confidential reporting of pregnancy-associated and pregnancy-related deaths by family members of or other appropriate individuals associated with a deceased patient. DSHS would have to:

- post on its website the contact information of the person to whom a report could be submitted; and
- conduct outreach to local health organizations on the availability of the review committee to review and analyze these deaths.

Licensed health care providers who were involved in obtaining information relevant to a case of pregnancy-associated death, pregnancy-related death, or severe maternal morbidity and who were otherwise required to report a violation related to the provider's profession would be exempt from the requirement to report the violation for information obtained under the bill. Information reported to DSHS under this bill would be confidential.

Midland County Hospital District. SB 2150, as amended, would authorize the Midland County Hospital District to adopt, change the rate of, or abolish a sales and use tax at an election held in the district. The bill would prohibit the district from adopting or increasing a tax if as a result the combined rate of all sales and use taxes in the district would exceed 2 percent. Revenue collected from a tax imposed under the bill could be used by the Midland County Hospital District for any purpose of the district authorized by law.

The bill would establish election procedures, a tax effective date, and other provisions governing the tax rate and a tax election of the district.

The bill would take effect September 1, 2019.

NOTES: The committee amendment would allow the Midland County Hospital District to impose a sales and use tax and make other conforming changes in Special District Local Laws Code ch. 1061 and Tax Code ch. 26.